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DISTRICT COURT OF GUAM
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MARY L. M. MORAN
CLERK OF COURT

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Attorneys for *Felix P. Camacho, Governor of Guam*

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

LOURDES P. AGUON-SCHULTE,

CIVIL CASE NO. 04-00045

(Superior Court of Guam
Civil Case No. CV1103-04)

THE GUAM ELECTION COMMISSION - 4 - 1

Defendants

JAY MERRILL, et al.

CIVIL CASE NO. 04-00046

(Superior Court of Guam
Civil Case No. CV1111-04)

THE GUAM ELECTION COMMISSION, et. al.

Defendants

**THE GOVERNOR OF GUAM'S
ANSWER TO THE FIRST AMENDED
COMPLAINT IN *MERRILL V. GUAM
ELECTION COMMISSION***

1 COMES NOW Defendant Governor of Guam Felix P. Camacho (the "Governor")
2 and for his Answer to Plaintiffs' First Amended Complaint ("Complaint") does hereby admit,
3 deny, and allege as follows:

4 1. As to paragraph 1, the Governor is without knowledge of the facts alleged
5 in paragraph 1 and on that basis denies those allegations.

6 2. As to paragraph 2, the Governor denies this paragraph on the ground that it
7 is a legal conclusion, and not a factual allegation.

8 3. As to paragraph 3, the Governor admits the allegations of paragraph 3.

9 4. As to paragraph 4, the Governor admits the allegations of paragraph 4.

10 5. As to paragraph 5, the Governor admits the allegations of paragraph 5.

11 6. As to paragraph 6, the Governor denies each and every allegation of
12 paragraph 6.

13 7. As to paragraph 7, the Governor denies each and every allegation of
14 paragraph 7.

15 8. As to paragraph 8, the Governor denies each and every allegation of
16 paragraph 8.

17 9. As to paragraph 9, the Governor denies each and every allegation of
18 paragraph 9.

19 10. As to paragraph 10, the Governor denies each and every allegation of
20 paragraph 10.

21 11. As to paragraph 11, the Governor denies each and every allegation of
22 paragraph 11.

23 12. As to paragraph 12, the Governor admits that Proposal A was on the ballot
24 for the scheduled November 2, 2004 Guam general election. The Governor denies each and
25

1 every other allegation in paragraph 12 because the Governor is without knowledge of the facts
2 alleged and on that basis denies those allegations.

3 13. As to paragraph 13, the Governor is without knowledge of the facts alleged
4 in paragraph 13 and on that basis denies those allegations.

5 14. As to paragraph 14, the Governor admits that Public Law 27-29 stated that
6 it appropriated \$455,290 to the Election Commission. The Governor is without knowledge of the
7 other facts alleged in paragraph 14 and on that basis denies those allegations.

8 15. As to paragraph 15, the Governor is without knowledge of the facts alleged
9 in paragraph 15 and on that basis denies those allegations.

10 16. As to paragraph 16, the Governor admits that on or about August 10, 2004
11 he approved the transfer of \$25,000 to the Election Commission “for education purposes (printing
12 of pamphlets and postage) for the Casino Gambling Initiative.” The Governor is without
13 knowledge of the other facts alleged in paragraph 16 and on that basis denies those allegations.

14 17. As to paragraph 17, the Governor admits that the Election Commission
15 mailed Proposal A ballot pamphlets. The Governor is without knowledge of the other facts
16 alleged in paragraph 17 and on that basis denies those allegations.

17 18. As to paragraph 18, the Governor admits the allegation of paragraph 18.

18 19. As to paragraph 19, the Governor is without knowledge of the facts alleged
19 in paragraph 19 and on that basis denies those allegations.

20 20. As to paragraph 20, the Governor admits the allegations of paragraph 20.

21 21. As to paragraph 21, the Governor is without knowledge of the facts alleged
22 in paragraph 21 and on that basis denies those allegations.

23 22. As to paragraph 22, the Governor is without knowledge of the facts alleged
24 in paragraph 22 and on that basis denies those allegations.

1 23. As to paragraph 23, the Governor is without knowledge of the facts alleged
2 in paragraph 23 and on that basis denies those allegations.

3 24. As to paragraph 24, the Governor admits that Guam's Legislature passed
4 Bill 374 on or about October 25, 2004, that a true and correct copy of Bill 374 is attached to the
5 Complaint as Exhibit 4, that Bill 374 was passed pursuant to 2 GCA § 2103 and that no public
6 hearings were held on Bill 374. The Governor denies each and every other allegation of
7 paragraph 24.

8 25. As to paragraph 25, paragraph 25 is a legal conclusion, not a factual
9 allegation. On that basis, it is denied.

10 26. As to paragraph 26, the Governor admits that the Attorney General
11 requested that he veto Bill 374. The Governor is without knowledge of the other facts alleged in
12 paragraph 26 and on that basis denies those allegations.

13 27. As to paragraph 27, the Governor admits the allegations of paragraph 27.

14 28. As to paragraph 28, the Governor is without knowledge of the facts alleged
15 in paragraph 28 and on that basis denies those allegations.

16 29. As to paragraph 29, the Governor admits the allegations of paragraph 29.

17 30. As to paragraph 30, the Governor is without knowledge of the facts alleged
18 in paragraph 30 and on that basis denies those allegations.

19 31. As to paragraph 31, in which Plaintiffs restate their previous allegations,
20 the Governor restates each previous response or denial to each previous allegation.

21 32. As to paragraph 32, the Governor denies each and every allegation of
22 paragraph 32.

23 33. As to paragraph 33, paragraph 33 is a legal conclusion, not a factual
24 allegation. On that basis, it is denied.

1 34. As to paragraph 34, paragraph 34 is a legal conclusion, not a factual
2 allegation. On that basis, it is denied.

3 35. As to paragraph 35, paragraph 35 is a legal conclusion, not a factual
4 allegation. On that basis, it is denied.

5 36. As to paragraph 36, paragraph 36 is a legal conclusion, not a factual
6 allegation. On that basis, it is denied.

8 37. As to paragraph 37, paragraph 37 is a legal conclusion, not a factual
9 allegation. On that basis, it is denied.

10 38. As to paragraph 38, paragraph 38 is a legal conclusion, not a factual
11 allegation. On that basis, it is denied.

12 39. As to paragraph 39, paragraph 39 is a legal conclusion, not a factual
13 allegation. On that basis, it is denied.

15 40. As to paragraph 40, the Governor is without knowledge of the facts alleged
16 in paragraph 40 and on that basis denies those allegations.

17 41. As to paragraph 41, the Governor denies each and every allegation of
18 paragraph 41.

19 42. As to paragraph 42, the Governor denies each and every allegation of
20 paragraph 42.

22 43. As to paragraph 43, in which Plaintiffs restate their previous allegations,
23 the Governor restates each previous response or denial to each previous allegation.

24 44. As to paragraph 44, the Governor is without knowledge of the facts alleged
25 in paragraph 44 and on that basis denies those allegations.

27 45. As to paragraph 45, the Governor denies each and every allegation of
28 paragraph 45.

1 46. As to paragraph 46, paragraph 46 is a legal conclusion, not a factual
2 allegation. On that basis, it is denied.

3 47. As to paragraph 47, paragraph 47 is a legal conclusion, not a factual
4 allegation. On that basis, it is denied.

5 48. As to paragraph 48, the Governor denies each and every allegation of
6 paragraph 48.

7 49. As to paragraph 49, the Governor admits that he has the power to call a
8 special election under certain circumstances and as provided by Guam law. The Governor denies
9 each and every other allegation of paragraph 49.

10 50. As to paragraph 50, the Governor admits that the Legislature has the power
11 to call a special election under certain circumstances and as provided by Guam law. The
12 Governor denies each and every other allegation of paragraph 50.

13 51. As to paragraph 51, the Governor is without knowledge of the facts alleged
14 in paragraph 51 and on that basis denies those allegations.

15 52. As to paragraph 52, paragraph 52 is a legal conclusion, not a factual
16 allegation. On that basis, it is denied.

17 53. As to paragraph 53, the Governor denies each and every allegation of
18 paragraph 53.

19 54. As to paragraph 54, the Governor denies each and every allegation of
20 paragraph 54.

21 55. The Governor denies the entirety of Plaintiffs' Prayer for Relief.

22 56. The Governor denies each and every other allegation of Plaintiffs'
23 Complaint not previously expressly admitted herein.

FOR AFFIRMATIVE DEFENSES

FOR AFFIRMATIVE DEFENSES, the Governor states that Plaintiffs' Complaint is also barred by some or all of the following affirmative defenses:

1. Failure to state a claim upon which relief can be granted.
 2. Lack of personal jurisdiction.
 3. Lack of subject matter jurisdiction.
 4. Sovereign immunity.
 5. Qualified immunity.
 6. Failure to join an indispensable party.
 7. Failure to exhaust administrative remedies.
 8. Laches.
 9. Unclean hands.
 10. Waiver.
 11. Estoppel.
 12. Lack of good faith and/or bad faith.
 13. Insufficiency of service of process.
 14. Adequate means of alternative relief exist.
 15. The right to writ is not clear and indisputable.
 16. Mootness.
 17. Ripeness.
 18. Substantial compliance
 19. Abstention.
 20. Lack of the elements for class certification under FRCP 23.

PRAYER FOR RELIEF

WHEREFORE, the Governor prays that:

1. Plaintiffs take nothing by this action;
 2. A judgment of dismissal in favor of the Governor be entered;
 3. The Governor be granted such other relief as is just and appropriate under

the circumstances, including reasonable costs and attorneys' fees.

Dated this 2nd day of December, 2004.

OFFICE OF THE GOVERNOR OF GUAM
CALVO AND CLARK, LLP
Attorneys at Law

By:

DANIEL M. BENJAMIN